

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

ROBERTO CABRERA ESQUIVEL, #41078-018

PLAINTIFF

VS.

CIVIL ACTION NO. 5:08-cv-242(DCB)(MTP)

CONSTANCE REESE, ET AL.

DEFENDANTS

ORDER

This cause is before the Court on the Report and Recommendation of Magistrate Judge Michael T. Parker (**docket entry 18**), and the plaintiff's objections thereto. Having carefully considered the recommendations of the magistrate judge, the objections, and the applicable law, the Court finds as follows:

Plaintiff Roberto Esquivel-Cabrera was convicted of illegal re-entry and on November 6, 2003, he was sentenced to a term of 110 months imprisonment by the Honorable James S. Moody, Jr. in the Middle District of Florida. Plaintiff is projected to be released from serving his criminal sentence on August 10, 2011.

Plaintiff, proceeding pro se, filed his complaint on or about July 15, 2008, against the following Defendants: Constance Reese, former Warden at the Federal Correctional Complex in Yazoo City, Mississippi ("FCC Yazoo City"); Russell A. Perdue, Associate Warden at FCC Yazoo City; Roy C. Cheatham, Captain at FCC Yazoo City; Salvatore A. Castelli, Sr., Deputy Captain at FCC Yazoo City; Debra D. Dawson, Special Investigative Supervisor at FCC Yazoo City; and Darryl L. Hooks, Unit Manager at FCC Yazoo City. Plaintiff alleges

that Defendants placed him in an "18-month Supermax-type atypical control unit" at FCC Yazoo City on August 20, 2007, based solely on his Mexican descent or nationality. Plaintiff claims he was placed in this unit without notice of the charges or an opportunity to be heard. He claims he suffered significant hardships in this unit, including 158 hours per week or more of cell confinement, deprivation of haircuts and unspecified general population privileges, and deprivation of visitation, law library access and religious services. He claims Defendants acted with deliberate indifference to his constitutional rights. Plaintiff seeks compensatory damages in the amount of \$3 million; exemplary damages in the amount of \$10 million; a restraining order to prevent Defendants from retaliating against him; and attorneys fees, costs, and interest. See Complaint [1] at 4-5.

All Defendants have filed a Motion to Dismiss or, in the Alternative, for Summary Judgment. In their Motion, Defendants argue that Plaintiff's claims should be dismissed because: (1) Plaintiff has failed to exhaust his administrative remedies; (2) Plaintiff has failed to demonstrate a violation of his constitutional rights; and (3) Defendants are entitled to qualified immunity.

In a well-reasoned Report and Recommendation, Magistrate Judge Parker finds that Esquivel-Cabrera failed to fulfill the requirements of the BOP's Administrative Remedy Program with

respect to his claims asserted in this lawsuit, and that Plaintiff has not shown that any exception to the exhaustion requirement applies. The magistrate judge concludes that Defendants' motion for summary judgment should be granted and this action dismissed for Plaintiff's failure to exhaust administrative remedies.

The plaintiff has filed objections which do not dispute the findings of the Report and Recommendation. The Court therefore adopts the Report and Recommendation in its entirety. Accordingly,

IT IS HEREBY ORDERED that the Report and Recommendation of Magistrate Judge Michael T. Parker (**docket entry 18**) is adopted in its entirety;

FURTHER ORDERED that the defendants' (Constance Reese, Russell A. Perdue, Roy C. Cheatham, Salvatore A. Castelli, Sr., Debra D. Dawson, and Darryl L. Hooks) motion for summary judgment (**docket entry 12**) is GRANTED, and said defendants' motion to dismiss (**docket entry 12**) is DENIED AS MOOT;

FURTHER ORDERED that this action is dismissed. A final judgment dismissing this action with prejudice shall follow.

SO ORDERED, this the 30th day of September, 2009.

/s/ David Bramlette
UNITED STATES DISTRICT JUDGE